

STATE OF INDIANA) IN THE MARION SUPERIOR COURT
) SS:
COUNTY OF MARION) CAUSE NO. 990060302 PL 000340

STATE OF INDIANA,)
)
Plaintiff,)
)
v.)
)
THIRD GENERATION REMODELING,)
INC,)
)
Defendant.)

FILED
79 FEB 24 2003
Dana L. G. Sholler
CLERK OF THE
MARION CIRCUIT COURT

**COMPLAINT FOR INJUNCTION, COSTS
AND CIVIL PENALTIES**

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Eric Jackson, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1 *et seq.*, and the Indiana Home Improvement Contracts Act, Ind. Code § 24-5-11-1 *et seq.*, for injunctive relief, civil penalties, costs, and other relief.

PARTIES

1. The Plaintiff, State of Indiana is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-5-0.5-4(c) and Ind. Code 24-5-11-14.
2. The Defendant, Third Generation Remodeling Inc., is an Indiana corporation engaged in business as a home improvement contractor with a principal place of business at 10255 Mohawk Drive, Indianapolis, IN 46236.

FACTS

3. On or about October 25, 2000, Defendant signed an Assurance of Voluntary Compliance agreeing to comply with the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-1 *et seq.*, and the Indiana Home Improvement Contracts Act, Ind. Code § 24-5-11-1 *et seq.* A true and correct copy of the Assurance of Voluntary Compliance is attached and incorporated by reference as Exhibit "A."

4. On or about February 27, 2001, Defendant entered into a contract with Kenneth Johnson ("Johnson") of Indianapolis, Indiana, wherein the Defendant agreed to repair Johnson's roof for a price of Ten Thousand Six Hundred Fifty and 00/100 Dollars (\$10,650.00). A true and correct copy of Defendant's contract with Johnson is attached and incorporated by reference as Exhibit "B".

5. Defendant failed to include the following information in its contract with Johnson:

- a. Any time limitation on Johnson's acceptance of the contract;
- b. A reasonably detailed description of the work to be performed under the contract;
- c. A statement that specifications would be provided to Johnson before commencing any work and that the contract was subject to Johnson's separate written and dated approval of the specifications;
- d. The approximate starting and completion dates of the home improvement work

6. On or about June 27, 2002, Defendant entered into a contract with Charles Marshall ("Marshall") of Indianapolis, Indiana, wherein Defendant agreed to replace the gutters on Marshall's home for a price of Eight Hundred Ninety-five and no/100 Dollars (\$895.00). A true and correct copy of the Defendant's contract with Marshall is attached and incorporated by reference as Exhibit "C".

7. The Defendant failed to include the following information in its contract with Marshall:

- a. A reasonably detailed description of the work to be performed under the contract;
- b. A statement that specifications would be provided to Marshall before commencing any work and that the contract was subject to Marshall's separate written and dated approval of the specifications;
- c. The approximate starting and completion dates of the home improvement work; and
- d. Signature lines for the Defendant's agent and Marshall, with a legible printed or typed version of each person's name directly after or below the signatures.

8. On or about November 17, 2001, Defendant entered into a contract with Margaret Lyons ("Lyons") of Whiteland, Indiana, wherein Defendant agreed to make renovations to Lyons' home for a price of Sixteen Thousand Three Hundred Ninety and no/100 Dollars (\$16,390.00). A true and correct copy of Defendant's contract with Lyons is attached and incorporated by reference as Exhibit "D".

9. Defendant failed to include the following information in its contract with Lyons:

- a. A reasonably detailed description of the work to be performed under the contract;
- b. A statement that specifications would be provided to Lyons before commencing any work and that the contract was subject to Lyon's separate written and dated approval of the specifications; and
- c. The approximate starting and completion dates of the home improvement work.

10. Defendant did not obtain the necessary City of Whiteland contractor's license and building permit before commencing work on Lyons' home.

COUNT I-VIOLATIONS OF THE HOME IMPROVEMENT CONTRACTS ACT

11. The services described in paragraphs 4, 6 and 8 above are “home improvements” as defined by Ind. Code § 24-5-11-3.

12. The transaction referred to in paragraphs 4, 6 and 8 above are “home improvement contracts” as defined by Ind. Code § 24-5-11-4.

13. By failing to provide a completed home improvement contract containing the information referred to in paragraph 5, 7 and 9 above, Defendant violated the Home Improvement Contracts Act, Ind. Code § 24-5-11-10.

14. By failing to obtain the necessary contractor’s license and building permit prior to commencing work, as referred in paragraph 10 above, Defendant violated the Home Improvement Contracts Act, Ind. Code § 24-5-11-9.

COUNT II – VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

15. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 14 above.

16. The transaction referred to in paragraph 4, 6 and 8 are “consumer transactions” as defined by Ind. Code § 24-5-0.5-2(a)(1).

17. Defendant is a “supplier” as defined by Ind. Code §24-5-0.5-2(a)(3).

18. The violations of the Indiana Home Improvement Contracts Act referred to in paragraph 16 constitute deceptive acts in accordance with Ind. Code § 24-5-11-14.

19. By engaging in a consumer transaction without the building permit and contractor’s license required by law, as referred to in paragraph 10 above, Defendant violated the Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-10(a)(1)(C).

20. The Defendant’s violations of the Deceptive Consumer Sales Act and Home

Improvement Contracts Act violate the Assurance of Voluntary Compliance entered into by the Defendant and are *prima facie* evidence of a deceptive act pursuant to Ind. Code §24-5-0.5-7(b).

**COUNT III – KNOWING AND INTENTIONAL VIOLATIONS OF THE
DECEPTIVE CONSUMER SALES ACT**

21. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1-20 above.

22. The misrepresentations and deceptive acts set forth in paragraphs 4 through 13 above were committed by Defendant with knowledge and intent to deceive.

RELIEF

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against the Defendant, Third Generation Remodeling, Inc., enjoining Defendant from the following:

a. in the course of entering into home improvement transactions, failing to provide to the consumer a written, completed home improvement contract which includes at a minimum the following:

(1) The name of the consumer and the address of the residential property that is the subject of the home improvement;

(2) The name and address of the home improvement supplier and each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;

(3) The date the home improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the home improvement contract;

(4) A reasonably detailed description of the proposed home improvements;

(5) If the description required by Ind. Code §24-5-11-10(a)(4) does not include the specifications for the home improvement, a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;

(6) The approximate starting and completion date of the home improvements;

(7) A statement of any contingencies that would materially change the approximate completion date;

(8) The home improvement contract price; and

(9) Signature lines for the home improvement supplier or the supplier's agent and for each consumer who is to be a party to the home improvement contract with a legible printed or typed version of that person's name placed directly after or below the signature;

b. in the course of entering into home improvement transactions, failing to agree unequivocally by written signature to all of the terms of a home improvement contract before the consumer signs the home improvement contract and before the consumer can be required to make any down payment; and

c. in the course of entering into home improvement transactions, failing to provide a completed home improvement contract to the consumer before it is signed by the consumer; and

d. failing to obtain the necessary license or permit as required by law prior to commencing any home improvement work;

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against Defendant for the following relief:

a. costs pursuant to Ind. Code §24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;

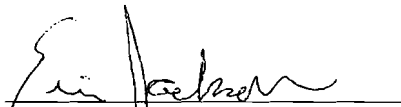
b. on Count III of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code §24-5-0.5-4(g) for the Defendant's knowing violations of the Deceptive Consumer Sales Act, in the amount of five hundred dollars (\$500.00) per violation, payable to the State of Indiana;

c. on Count III of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code §24-5-0.5-8 for the Defendant's intentional violations of the Deceptive Consumer Sales Act, in the amount of five hundred dollars (\$500.00) per violation, payable to the State of Indiana;

d. all other just and proper relief.

Respectfully submitted,

STEVE CARTER
Attorney General of Indiana
Atty. No. 4150-64

By: 
Eric L. Jackson
Deputy Attorney General
Atty. No. 19415-49

Office of Attorney General
Indiana Government Center South
302 W. Washington, 5th Floor
Indianapolis, IN 46204
Telephone: (317) 233-3987

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

IN THE MARION CIRCUIT COURT

AVC NO. 00 AVC 069

IN RE: THREE G REMODELING, INC.,)
)
Respondent.)
)

FILED

NOV 02 2000

Josh M. Taylor
CLERK OF THE
MARION CIRCUIT COURT

ASSURANCE OF VOLUNTARY COMPLIANCE

The State of Indiana, by Attorney General Karen M. Freeman-Wilson and Deputy Attorney General Eric Jackson, and the Respondent, Three G Remodeling, Inc., enter into an Assurance of Voluntary Compliance (Assurance) pursuant to Indiana Code § 24-5-0.5-7.

Any violation of the terms of this Assurance constitutes prima facie evidence of a deceptive act. This Assurance is entered into without any adjudication of any issue of fact or law, and upon consent of the parties.

The parties agree

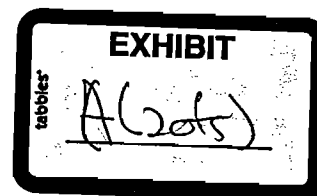
1. Respondent is an Indiana corporation engaged in business as a home improvement contractor with a principal place of business at 2626 E. 46th St. Suite 211, Indianapolis, Indiana 46205, and transacts business with Indiana consumers.
2. The terms of this Assurance apply to and are binding upon Respondent, its employees, agents, representatives, successors, and assigns.
3. Respondent acknowledges the jurisdiction of the Consumer Protection Division of the Office of the Attorney General to investigate matters hereinafter described, pursuant to the authority of Ind. Code §4-6-9-4 and Ind. Code §24-5-0.5-1 et seq.
4. Respondent agrees, pursuant to Ind. Code §24-5-11-10, in every home improvement transaction to provide a completed home improvement contract to the consumer



before it is signed by the consumer. Respondent agrees that the contract must contain at a minimum the following:

- (a) The name of the consumer and the address of the residential property that is the subject of the home improvement;
- (b) The name and address of the home improvement supplier and each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;
- (c) The date the home improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the home improvement contract;
- (d) A reasonably detailed description of the proposed home improvements;
- (e) If the description required by Indiana Code 24-5-11-10(a)(4) does not include the specifications for the home improvement, a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;
- (f) The approximate starting and completion date of the home improvements;
- (g) A statement of any contingencies that would materially change the approximate completion date;
- (h) The home improvement contract price; and
- (i) Signature lines for the home improvement supplier or the supplier's agent and for each consumer who is to be a party to the home improvement contract with a legible printed or a typed version of that person's name placed directly after or below the signature.

5. Respondent agrees, pursuant to Ind. Code § 24-5-11-11, that before the consumer signs the home improvement contract and before the consumer can be required to make a down payment, the Respondent must have agreed unequivocally by written signature to all of the terms of the home improvement contract.



6. Respondent agrees, pursuant to Ind. Code § 24-5-11-12, that the Respondent shall give a fully executed copy of the home improvement contract to the consumer immediately after the consumer signs it. The contract must also show the dates the Respondent and each consumer executed the contract.

7. Respondent, in soliciting and/or contracting with consumers, agrees to refrain from conducting any business activity in the State of Indiana unless those activities are in full compliance with the Home Improvement Contracts Act, Ind. Code § 24-5-11-1--14.

8. Respondent agrees to refrain from conducting any home improvements until it has first obtained all necessary licenses and building permits required by law.

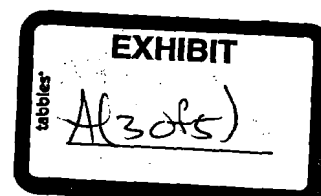
9. Respondent agrees, pursuant to Ind. Code §25-28.5-1-11, not to act in the capacity of a plumbing contractor or journeyman plumber within this state without first obtaining a license as a plumbing contractor or journeyman plumber from the Indiana Plumbing Commission.

10. Respondent, in soliciting and/or contracting with consumers, agrees to comply in all aspects with the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-1--10

11. Upon execution of this Assurance, Respondent shall pay the amount of Five Hundred Dollars (\$500.00) to the Office of the Attorney General. The office of Attorney General will then distribute the Five Hundred Dollars (\$500.00) to Miss Doris Johnson, 3226 N. Olney Street, Indianapolis, Indiana 46218.

12. Respondent agrees to make the following repairs to Miss Doris Johnson's home located at 3226 N. Olney Street, Indianapolis, Indiana 46218, which repairs will be completed by September 20, 2000:

- a. Remove the pipe in the living room, and install a new pipe that does not protrude through the living room. Patch the hole in the wall, and the hole in the



floor. The hole in the floor will be patched by using a similar type and color of wood that matches the existing wooden floor.

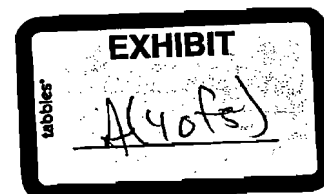
- b. Caulk the areas and walls that are loose in the bathroom. This includes the area near the ceiling of the shower that is peeling, and the area outside the tub that is peeling. This also includes the part of the sink that is loose.
- c. Fix the stopper in the bathroom sink.
- d. Remove and replace the register in the bathroom with a white register.
- e. Install insulation and patch the hole behind the cabinets in the kitchen. While performing this repair, check the leaking pipe, and if possible repair the leaking pipe.
- f. Fix the exhaust pipe near the dryer. The pipe will be replaced with a longer pipe and secured down

13. Respondent acknowledges that the complaint of Ruth Sledge, 1951 Yandes Street, Indianapolis, Indiana 46202 remains unresolved and that no part of this Assurance resolves Miss Sledge's complaint. The Office of Attorney General will continue to investigate Miss Sledge's complaint, and the Respondent agrees to act in good faith to resolve the complaint.

14. Respondent shall not represent that the Office of the Attorney General approves or endorses Respondent's past or future business practices, or that execution of this Assurance constitutes such approval or endorsement.

15. Respondent shall fully cooperate with the Office of the Attorney General in the resolution of any future written complaints the Consumer Protection Division receives.

16. The Office of the Attorney General shall file this Assurance with the Circuit Court of Marion County. The Court's approval of this Assurance shall not act as a bar to any private right of action.



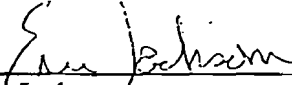
DATED this 25 day of Oct, 2000.

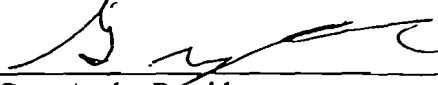
STATE OF INDIANA

RESPONDENT

KAREN M. FREEMAN-WILSON
Attorney General of Indiana

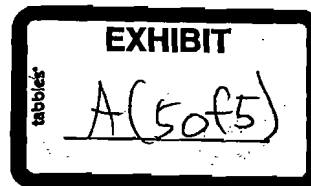
THREE G REMODELING, INC.

By: 
Eric Jackson
Deputy Attorney General
Atty. No. 19415-49
Office of Attorney General
402 W. Washington, 5th Floor
Indianapolis, Indiana 46204
Telephone: (317) 233-3987


Greg Arvin, President
Greg Arvin

APPROVED this _____ day of _____, 2000.

Judge, Marion Circuit Court



Proposal

Page No. _____ of _____ Pages

Insured & Bonded

Third Generation Remodeling, Inc.
 Since 1929
 6402 N. Keystone Avenue
 Indianapolis, Indiana 46220
 (317) 475-9672 • Fax: (317) 475-9678

PROPOSAL SUBMITTED TO
 Kenneth Johnson
 602 E Town
 CITY STATE AND ZIP CODE
 INDIANAPOLIS, IN 46203

ARCHITECT
 DATE OF PLANS

JOB LOCATION
 PHONE
 635-6132
 DATE 2/27/01

JOB NAME
 JOB PHONE

The Proposer hereby to furnish material and labor — complete in accordance with specifications below, for the sum of

Payment to be made as follows

50% down balance on completion

dollars \$ 10,650.00

Authorized Signature _____

Printed JAMES E ARVIN

Note: This proposal may be withdrawn by us if not accepted within _____ days

All material is guaranteed to be as specified. All work to be completed in a workman like manner according to standard practices. Any alteration or deviation from specifications below working extra costs will be executed only upon written orders and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents, or delays beyond our control. Owner to carry his, tornado and other necessary insurance. Our workers are fully covered by Workmen's Compensation Insurance.

We hereby submit specifications and estimates for

REMOVE SHINGLES DOWN TO SPACED SHEATHING

INSTALL NEW 7/16 OSB WATER BOARDS

INSTALL 15# DRY-11 FELL

INSTALL 4 ROOF VENTS

INSTALL 25 YEAR FIBERGLASS SHINGLES COLOR

BACK SHED TYPE ROOF INSTALL BRAT ROOF

REMOVE SHINGLES FROM GARAGE ROOF & INSTALL

15# FELL 25 YEAR SHINGLES

CLEAN UP & Haul AWAY WORK RELATED DEBRIS

FISH PLUG OR HOLE WITH ALUMINUM FLASHING

Received CH# 03947328 3/7/01 J.E.A.

Amount of \$4,579.95

Signature _____

Printed _____

Signature _____

Printed _____

MAKE ALL CHECKS PAYABLE TO: Third Generation Remodeling, Inc.

GREG ARVIN, OWNER

Acceptance of Contract - The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Upon Approval of Financing This is A Binding Contract With 3-G-remodeling.

Subsequent breaking of this contract will result in a suit for breach of contract with penalties exacted to full extent of the law plus Attorney's Fees.

EXHIBIT

tabbles

Date of Acceptance _____

Proposal

Page No. of Pages

License
C1-901-201

Third Generation Remodeling, Inc.
Since 1929
6402 N. Keystone Avenue
Indianapolis, Indiana 46220
(317) 475-9672 • Fax: (317) 475-9678

Insured & Bonded

PROPOSAL SUBMITTED TO Mr MARSHALL	PHONE 926-4440	DATE 6/27/02
STREET 2932 N. Hillside	JOB NAME	
CITY STATE AND ZIP CODE	JOB LOCATION	
ARCHITECT	DATE OF PLANS	JOB PHONE

We Propose hereby to furnish material and labor — complete in accordance with specifications below, for the sum of

Payment to be made as follows

dollars (\$ **895⁰⁰**)

Received 795⁰⁰ 6/27/02 J. G. P.

Authorized
Signature

Printed

All material is guaranteed to be as specified. All work to be completed in a workman like manner according to standard practices. Any alteration or deviation from specifications below involving extra costs will be executed only upon written orders and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents, or delays beyond our control, Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workmen's Compensation Insurance.

Note This proposal may be withdrawn by us if not accepted within _____ days

We hereby submit specifications and estimates for

REPLACE GUTTER Bd S.E CORNER 15'
& PAINT
REPLACE SOFFIT BACK OF HOME BY
ELECTRIC SERVICE

NEW GUTTER BACK OF HOME
NEW GUTTER SO. SIDE
REPLACE FRONT GUTTER SO. EAST
BY DOWN SPOUT S' SECTION
CAULK END FRONT N.E. CORNER
HAUL AWAY Old wood & gutter

MAKE ALL CHECKS PAYABLE TO: Third Generation Remodeling, Inc.
GREG ARVIN, OWNER

Acceptance of Contract - The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above. Upon Approval of Financing This Is A Binding Contract With 3-G-remodeling. Subsequent breaking of this contract will result in a suit for breach of contract with penalties exacted to full extent of the law plus Attorney's Fee's.

Signature

Printed

Signature

Printed

Date of Acceptance

6/26/02

EXHIBIT

tabbles

C

Proposal

Page No. of Pages

License
C1-901-201

Third Generation Remodeling, Inc.

Insured & Bonded

Since 1929

6402 N. Keystone Avenue
Indianapolis, Indiana 46220

(317) 475-9672 • Fax: (317) 475-9678

PROPOSAL SUBMITTED TO <u>MARGARET E LYONS & Shirley L. SMITH</u>		PHONE <u>298-9990</u> <u>535-9469</u>	DATE <u>11/17/01</u>
STREET <u>219 PINE DALE DR</u>		JOB NAME <u>Shirley</u>	
CITY STATE and ZIP CODE <u>Whiteland IN 46184</u>		JOB LOCATION	
ARCHITECT	DATE OF PLANS	JOB PHONE	

We Propose hereby to furnish material and labor - complete in accordance with specifications below, for the sum of

dollars (\$ 20,576)

Payment to be made as follows

All material is guaranteed to be as specified. All work to be completed in a workman like manner according to standard practices. Any alteration or deviation from specifications below involving extra costs will be executed only upon written orders and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents, or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workmen's Compensation Insurance.

Authorized
Signature

Printed

Note This proposal may be

withdrawn by us if not accepted within

days

We hereby submit specifications and estimates for

ROOF go over EXISTING ROOF HOME ONLY
25 YEAR SHINGLES color white
INSTALL 6" seamless gutters with 4" down spouts
color white
~~INSTALL shadow box fence with post set in concrete on the~~
GARAGE per plan to bed room bath
WIRING TO PLAN & CODE WITH BASE BD. HEAT
LIGHTS EACH SIDE OF NEW FRONT DOOR & WINDOWS.
FAN & light in bed room
INSTALL CABINETS FOR KITCHEN WITH SINK
BATH TO HAVE STOOL & HAD
LARGE MIRROR in BATH
Add 1/2 wall BASEMENT STAIR per plan
OWNER TO PAINT & INSTALL CARPET
CLOSET WITH LIGHT & shelf board
CLEAN UP & HAUL AWAY WORK RELATED DEBRIS
OWNER WANTS ADDITIONAL AMOUNT OF \$5,000.00

\$16,390.00

Roof &
gutters

\$14,500.00
1,190.00

4,186.00 unit.

16396.00

MAKE ALL CHECKS PAYABLE TO: Third Generation Remodeling, Inc.
GREG ARVIN, OWNER

Acceptance of Contract - The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above. Upon Approval of Financing This is A Binding Contract With 3-G-remodeling. Subsequent breaking of this contract will result in a suit for breach of contract with penalties exacted to full extent of the law plus Attorney's Fee's.

Signature Margaret E. Lyons

Printed Margaret E. Lyons

Signature Shirley Smith

Printed Shirley Smith

Date of Acceptance 11/17/01

EXHIBIT

tabbles

D